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OFFICE OF THE CLERK

No.

In the

Supreme Court of the United States

JAMES L. MARTIN,

Petitioner,

versus

UNITED STATES DEPARTMENT OF EDUCATION and LEROY S. ROOKER, DIRECTOR,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. Is a justice serving on the Supreme Court of the United States subject to the recusal statute at 28 USC Sec. 455?

B. May a federal trial court foreclose a Rule 60(b) Motion to Reopen from being filed, by directing the Clerk to "Return [the original] to sender"?

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OPINIONS BELOW

The judgment sought to be reviewed was issued on 10-27-00, at Ex-1a, and the petition for rehearing, and for rehearing *en banc*, were denied on 1-4-01, at Ex-2a to 3a. The trial court's decision, in its entirety, reads: "Leave to file denied. Case closed. Return to sender," scrawled in the left margin of the first page of the Petitioner's Statement of Uncontroverted Material Facts, 4a.

JURISDICTION

The time to file here was extended to 5-4-01, at No. 00A766, and the 34-page Rule 30 Application filed in this Court on 3-5-01 is incorporated herein by reference. This Court's jurisdiction for review is at 28 USC Sec. 1254(1).

STATUTORY PROVISIONS

28 USC Sec. 455 DISQUALIFICATION OF JUSTICE, JUDGE, ...

> (a) Any judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, ...

F. R. Civ. P. 60(b):

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); . . ..

STATEMENT OF THE CASE

Basis for federal jurisdiction in the court below. The Court of Appeals has jurisdiction pursuant to 28 USC Sec. 1291, for appeal from a final order.

Facts. The respondent US Department of Education, through its Office for Civil Rights, issued an administrative decision in my favor and against the Widener University School of Law in Wilmington, Delaware. This decision was issued over ten (10) years ago following an investigation into the Law School's inclusion of a question about an applicant's remote medical history on its application form for admission to the Law School.

The respondent correctly determined that the Law School violated my rights under the Rehabilitation Act of 1973, Sec. 504, after the School persisted to create an issue about my answer to the unlawful question concerning remote medical past, without any regard for my consistent and demonstrated scholastic competence, which has been thoroughly documented with my passing scores on more state bar exams than any of the judges or Law School personnel associated with this case, and with the many cases related to it. The respondent Department and its Director assisted the Law School with an extensive retaliatory scheme directed against me involving a prolonged and continuing assertion that I was ineligible for the practice of law on account of my answer to their unlawful question about remote medical history. In the interim, the respondent diverted my federal income tax refunds, by involuntary setoffs, to cover an educational loan I could not continue to repay on account of the respondents' interference with my law licenses; specifically, because the respondents assisted the Law School, and its affiliated and employed judges, to consistently continue the scheme this federal agency previously held to be unlawful.

In addition to the diverted income tax refunds, another factual foundation for reopening this case came from Mary Jane DeAngelis, who talked with Robert Henry, one of three members on the Law School's committee who issued a decision following an "interview" conducted in violation of the Law School's own policy. Henry said, "The consensus among the panel members [at the Widener University School of Law] was that Martin had done nothing wrong, ..." See para. 10 of the DeAngelis affidavit. The Law School's faculty secretary issued a statement to proclaim that the Committee had found that I misrepresented my remote medical background when I applied for admission in 1979. This statement was not issued until 1983, after I graduated from the Law School in 1982.

When the state courts engaged in their scam to portray my state bar admission as a "mistake," they were compounding the misrepresentations exported from the Law School, where the findings were reported as if the Law School's Committee had reached the opposite conclusion. The fact that I was formally admitted to practice law in the state court was ignored, as was my unblemished lifetime record. Before the cases involving this petitioner, the reported cases involving suspension and disbarment required some kind of misconduct or negligence.

My Rule 60(b) Motion was unopposed in the trial court. The trial court directed the Clerk to return the Motion and supporting Memo with an affidavit to me summarily, without filing it.

These continuing and brazen violations of both routine procedural rules and of substantive law are readily understood in light of the appearance of Chief Justice Rehnquist at the Widener University School of Law's Radisson Hotel on Friday, October 23, 1998, where he was an honored guest who spoke about wartime civil liberties. Afterwards, the Law School held a private reception in its library for Chief Justice Rehnquist, so that the affiliation

between Justice Rehnquist and the Law School cannot be questioned. The decisions from more than one-hundred (100) certiorari petitions would have been substantially different if a neutral judge had been presiding, rather than one so completely committed to the adversaries of this petitioner. Chief Justice Rehnquist was awarded an honorary doctor of laws degree from the Law School over eighteen (18) years ago. Jeff Moulton, a professor on the faculty at the Law School, who clerked for Justice Rehnquist in the mid-1980's, introduced Justice Rehnquist to the audience of about six hundred (600), mostly students, alumni, judges, and faculty. (See article from Sec. B1, *The News Journal*, Wilmington, DE, Oct. 24, 1998.) The *Widener Magazine*, a Publication of the Office of University Relations, Spring 2001 edition, at p, 35, contains a picture of "Fitz Eugene Dixon, chairman of the [Widener] Board of Trustees, Chief Justice William Rehnquist, and [Widener President Robert J.] Bruce," and they are standing close to one another, with on one else on the picture.

REASONS THE WRIT SHOULD BE GRANTED

A. A justice serving on the Supreme Court of the United States is subject to the recusal statute at 28 USC Sec. 455.

The controlling statute is at 28 USC Sec. 455, DISQUALIFICATION OF JUSTICE, JUDGE, ...:

> (a) Any judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, ...

I filed a recusal motion *nunc pro tunc* directed to Chief Justice Rehnquist numerous times, including one such request in the matter *sub judice* on 3-5-01. The factual basis for the recusal request is Chief Justice Rehnquist's continuing and prolonged affiliation with the Widener University School of Law. I filed it *nunc pro tunc* to allow for a retroactive disqualification, to relate back to the time when the honorary doctor of laws degree was awarded, about eighteen years ago. This recusal request, like many others, was ignored.

When I specifically demanded a ruling on a similar request in a related case, *James L. Martin v. United States Tax Court*, Assistant Clerk Cynthia Rapp wrote to me in a letter dated 4-10-00: "The request is premature as you currently have no case before the [Supreme] Court. Furthermore, a Justice will sua sponte recuse him or herself if it is appropriate."

I responded, in a letter that was stamped "received 6-7-00, Office of the Clerk, Supreme Court, US:"

> The Application for Recusal was timely and appropriate in view of my Application for a Stay that was denied on 3-29-00 by Chief Justice Rehnquist, even though my Application for a Stay, at No. A-99A800, was filed with a Recusal Application [directed to Chief Justice Rehnquist] at that time. You suggest that recusal applications are premature for all issues prior to the issuance of a docket number. In fact, a petitioner before the court is entitled to an arguably neutral justice on all issues, including preliminary ones as well as applications for stays.
>
> Your comment about a *sua sponte* recusal is not entirely correct, but it does not preclude a petitioner from seeking recusal. Obviously, Chief Justice Rehnquist should

> have been recused from all cases involving the Delaware Law School of Widener University [also called Widener University School of Law], but he was recused from none of those cases. See attached article.
>
> You should also be aware of the statement from MJD [Mary Jane DeAngelis]. A neutral justice would have made a decisive difference in the cases I brought, and will continue to bring, before the court."

My response made no difference, and the recusal motion was never ruled upon. Three months later, after I docketed the certiorari petition entitled *James L. Martin v. John D. Walmer, [Widener University School of Law], et. al.*, No. 99-2009, and after I filed another Motion to Recuse and to Disqualify Chief Justice Rehnquist, Assistant Clerk Francis J. Lorson wrote to me in a letter dated 7-10-00:

> "Your motion for the Chief Justice to recuse himself was received and has been circulated to the Court for its information. Such motions are not placed on this Court's docket."

The procedural status of the Walmer petition precluded the hollow argument from Rapp about the recusal motion being "premature as you currently have no case before the Court." Rapp's second argument about a justice's *sua sponte* recusal in appropriate cases was patently frivolous and malicious in view of the facts to merit recusal. Both of Rapp's excuses were likely false at the time they were issued, because "Such motions are not placed on this Court's docket" according to Assistant Clerk Lorson.

This scenario provides several insights into the operation of the Supreme Court. Assistant Clerks who

routinely issue false and hollow excuses to undermine what should be rulings on routine motions are not disciplined, and no effective remedy exists to take any remedial measures against them. This is evident from *Martin v. Lorson, Vasil, and Suter*, No. 94-MS00312, D. DC., aff'd on appeal, at 94-8033, DC Cir., where I sought a "writ of mandamus for affirmative injunctive relief under the All Writs Act [28 USC Sec. 1651] to compel them [US Supreme Court Clerks] to either docket the certiorari petitions at issue, or to account for their refusal to do so in view of both the interim disclosures [documenting the criminal convictions of some of my adversaries on the bench and in public service, including PA Supreme Court Justice Rolf Larsen and PA Attorney General Ernest Preate, Jr.] and the lower courts' reversal of their previous position on the IFP motions, as set forth in the petition presented for filing on 7-5-94."

In an "Answer to Rule to Show Cause" filed in the DC Cir. at appeal No. 94-8033, I argued, unopposed:

> Likewise, when it becomes unmistakeably clear, even to a persistently belligerent fool, that one position is right and another one is wrong, and when the fool nonetheless persists with attempting to undermine authority, then a mandamus petition is properly granted.
>
> The clerks at the US Supreme Court, who are named as appellees, are now in that position, with persistently attempting to undermine a series of subsequent decisions from several federal judges, whose machinations were responsible for many of the problems recited in the certiorari petitions.
>
> Now that the corruption and cases-for-cash frivolities characteristic of the PA judiciary have been fully exposed through the

> impeachment trial of one Rolf Larsen, the few petitioners who accurately and persistently sought to remedy the corruption through the Civil Rights Statute, 42 USC Sec. 1983, should be regarded for the competence and skill incident to their attempts. Instead, the US Supreme Court issued hollow language about some "frivolous and malicious" filings, even though the adversaries have since largely withered. The court should not try to shore up those hollow-headed scoundrels by peculiar procedures designed to alleviate their burden to respond to the reality of what they caused. In other words, the Solicitor General, or counsel for the errant clerks, should be compelled to answer the claims made against them in the mandamus petition.

Similarly, despite the Clerks' consistent efforts to enjoin a petitioner from seeking the remedy in Sec. 455 against a justice who does not voluntarily honor the recusal statute, the Court should revise its procedures to ensure that an aire of neutrality on the bench prevails. Disqualification of a justice, at 28 USC Sec. 455(a) is required "in any proceeding in which his impartiality might reasonably be questioned." In Aetna Life Insurance Co. v. Lavoie, 475 US 813 (1986), the Court set forth these elements to warrant not merely a recusal, but also a constitutional violation, where the judge at issue served on a state court:

> "More than 30 years ago Justice Black, speaking for the Court, . . . acknowledge[d] that what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' Nonetheless, a reasonable formulation of the

> issue is whether the 'situation is one which would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear, and true."

475 US at 821-822. Chief Justice William Rehnquist should be forthwith recused and disqualified *nunc pro tunc* from his case, and from all the cases related to it. Likewise, the judges serving on the US Court of Appeals for the DC Circuit should have been recused and disqualified for the reasons set forth in the Motion to Recuse directed to them.

B. A federal trial court judge many not foreclose a Rule 60(b) Motion to Reopen from being filed, by directing the Clerk to "Return [the original] to sender."

Although the Second, Eighth, and Ninth Circuits have ignored the Third and the Federal Circuit's efforts to sabotage my career by summarily disbarring me, without notice, hearing, or cause, under the guise of a "mistake" that allegedly occurred in the admissions office--a patently frivolous and malicious claim in light of the factual record--various other circuits have issued show-cause orders about the issues created, and my Rule 60(b) Motion was one method to ensure that the continuing interference is effectively enjoined.

According to F. R. Civ. P. 60(b),

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); . . ..

Rule 60(b) does not provide for any trial judge to enjoin the application of this Rule by directing the Motion to Reopen to be "returned to sender." The reported cases deal with questions about whether newly discovered evidence was readily available when the case was decided the first time, and technical questions about whether the timeliness of a motion to reopen. The terms of Rule 60(b) foreclose any meaningful discussion about whether "leave" is needed to proceed under the Rule: it is not needed, and I had no obligation to ask permission from any judge before moving to reopen. The trial judge's decision to reject the filing of the motion was outrageous, but consistent with efforts from the clerks whose interference with docketing of other, related cases before this Court has been discussed above.

The recently-discovered facts relating to the scandal involving Robert King at Widener University School of Law, and of its spillover costs to me in 1982, were fortuitous and easily concealed because liar Joseph Farnan Jr., a federal trial judge in Delaware acting under color of federal judicial law, was a paid employee of Widener University School of Law when the case arose, and lied about his job there for over six (6) years, until I accidentally learned about it and ousted him. Liar Farnan, while pretending to be a legitimate judge, protected his employer from answering obvious questions about the nature and extent of the misconduct evident from the pleadings and proofs in my possession at that time.

I do recall at least two occasions when I, and all the students enrolled in the day division at the Delaware campus of the law school, were dismissed with an emergency alarm, until security experts ensured the school's administrators that it was safe to re-enter. I recall that the concern was focussed on a dangerous student at that time, but at this point, because these respondents have been protected by judges who should have been recused, including Chief Justice Rehnquist, I have no way to ascertain whether these security issues were the

same as the one mentioned in the DeAngelis affidavit. These respondents were responsible for helping the Law School parties to patronize Robert King, a felon, despite his wielding a gun and threatening a faculty member on the law school campus. While these goons were colluding to undermine my career, I was working at the US DOJ as a clinical intern, and was awarded a commendation outstanding enough to induce the scoundrels at the law school to destroy it without any sanctions, while liar Farnan, acting under color of federal judicial law, purported to preside over the proceedings, after a final administrative judgment was issued in my favor and against the Law School. The letter of reference was eventually recovered from the US DOJ under the FOIA, but the judges, in deference to their associates who were protected by the respondents here, casually ignored it.

The Third Circuit, which exported the disinformation to the DC Circuit, appears to have a compelling motive to bury the sordid details surrounding one of the most extensive and prolonged series of cases ever brought before this court:

> According to Henry [a member of the three-member Committee], the reason Martin's case was mishandled at Widener [Law School] resulted from the prevailing countercurrents created with disclosures surrounding then Widener law student Robert King. King was related to Supreme Court Justice Black, had a criminal homicide record, but lied about it and was admitted to Widener to study law. King's family possessed considerable wealth/power. During his tenure as a law student, he threatened a faculty member with a gun, and the issue naturally arose about what sanctions should be imposed. The rules called for his expulsion, in view of his misrepresentations on his application for admission as well as his

> physical threat to a faculty member. Instead of carrying out the mandated expulsion of King, Widener considered the King case in a political light, and decided to avoid potential implications in view of the relationship between King and Justice Black. Therefore, Widener arranged for King to transfer to the University of Maryland School of Law to continue legal studies.
>
> These machinations surrounding the King case created an atmosphere with Widener's faculty of vindictiveness and of a jealous competition for special treatment in light of an obvious use of double standards. Some disagreed with and felt shame about how King was allowed to lie about such significant matters as his prior criminal record, his prior dismissal from another law school, but also his accosting a Widener faculty member with a gun. Other faculty hoped to curry favor by covering up the school's prior use of double standards; they established a pretense of extreme intolerance for unethical/unlawful behavior. These faculty therefore intended to impose severe sanctions on any future student suspected of lying on his application for admission, regardless of whether the question was a lawful one.

According to para. 10 of the DeAngelis affidavit, Committee member Robert Henry said, "The consensus among the panel members [at the Widener University School of Law] was that Martin had done nothing wrong, ..." As more recently-discovered evidence comes to light despite the judicial efforts to block discovery of facts and the public

disclosure of evidence in support of such facts in the public, judicial record, this court's portrait of long-standing attorney James Lee Martin as a frivolous and notorious abuser of the certiorari process is increasingly exposed and debunked as hollow, if not preposterous and malicious.

CONCLUSION

This certiorari petition should be granted to ensure that the federal recusal statute does apply to justices who serve on the Supreme Court. This petition also presents the radical departure of the DC Circuit Court from well-established precedent that allows the filing of Motions to Reopen whenever the conditions in Rule 60(b) are satisfied, without seeking any advance ruling from a trial judge prior to filing the Motions. The trial judge's effort to prevent the newly-discovered evidence from being filed in the public record is reprehensible and contrary to all precedential authority.

DATED: May 4, 2001

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James L. Martin, Appellant v. Department of Education and Leroy S. Rooker, Director, Family Policy and Regulations Office, Appellees

No. 00-5247

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

2000 U.S. App. LEXIS 29152

October 27, 2000, Filed

NOTICE:
RULES OF THE DISTRICT OF COLUMBIA CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

COUNSEL:
JAMES L. MARTIN, Plaintiff - Appellant, Pro se, Wilmington, DE.

For DEPARTMENT OF EDUCATION, LEROY S. ROOKER, Defendants - Appellees: R. Craig Lawrence, Assistant U.S. Attorney, U.S. Attorney's Office, Washington, DC.

JUDGES:
BEFORE: Edwards, Chief Judge; Tatel and Garland, Circuit Judges.

OPINION:

ORDER

Upon consideration of the motion to recuse, the motion for summary reversal, and the opposition thereto and motion for summary affirmance, it is

ORDERED that the motion to recuse be denied. It is

FURTHER ORDERED that the motion for summary reversal be denied and that the motion for summary affirmance be granted. The district court did not abuse its discretion in declining to reopen this case, as the purported new evidence concerning Widener University is irrelevant to the res judicata dismissal of this action against various federal defendants. The merits of the parties' positions are so clear as to warrant summary action. See *Taxpayers Watchdog, Inc. v. Stanley, 260 U.S. App. D.C. 334, 819 F.2d 294, 297 (D.C. Cir. 1987)* (per curiam); *Walker v. Washington, 201 U.S. App. D.C. 82, 627 F.2d 541, 545* (D.C. Cir.) (per curiam), cert. denied, *449 U.S. 994 (1980).*

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

James L. Martin, Plaintiff v.
Department of Education and Leroy
S. Rooker, Director, Family Policy
and Regulations Office, Defendant

No. 90-2492

UNITED STATES COURT FOR
THE DISTRICT OF COLUMBIA
CIRCUIT

Filed: 5/24/00

Leave to file denied. Case Closed. Return to sender.

James L. Martin, Appellant v.
Department of Education and Leroy
S. Rooker, Director, Family Policy
and Regulations Office, Appellees

No. 00-5247

UNITED STATES COURT OF
APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT

Filed: 1/4/01

ORDER

Upon consideration of appellant's petition for rehearing filed 11/8/00, it is

ORDERED that the petition be denied

FOR THE COURT
Mark J. Langer

James L. Martin, Appellant v.
Department of Education and Leroy
S. Rooker, Director, Family Policy
and Regulations Office, Appellees

No. 00-5247

UNITED STATES COURT OF
APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT

Filed: 1/4/01

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is denied